

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218730.4 **DATE:** November 20, 1985
MATTER OF: Air Inc.--Reconsideration

DIGEST:

To be responsive, bid submitted under total labor surplus area (LSA) set-aside must contain requisite certification that bidder will perform as an LSA. Arguments which are a reiteration of those previously considered in deciding initial protest do not provide basis for reconsideration.

Air Inc. requests reconsideration of our decision in Air Inc.--Request for Reconsideration, B-218730.3, Oct. 4, 1985, 85-2 C.P.D. ¶ , in which we affirmed our denial of Air's original protest. In its original protest, Air contended that the General Services Administration (GSA) erroneously rejected its bid as nonresponsive for failure to indicate whether the bidder intended to perform in a labor surplus area (LSA). Air argued that its bid was responsive because its signature on the bid bound it to perform the services required by the solicitation--a total LSA set-aside--in an LSA; and that any doubt as to where it would perform was a matter of responsibility that could be resolved after bid opening. We concluded that Air was not an LSA concern for purposes of this procurement because the information furnished in Air's bid was ambiguous as to whether the requisite LSA commitment had been made.

In this, its second request for reconsideration, Air reiterates that the LSA provision is not a material term of the solicitation which must be established at bid opening because a bidder's LSA status has no effect on "price, quantity, quality or delivery." Air apparently does not fully comprehend the basis of our decision. The solicitation contained the "Notice of Total Labor Surplus Area Set-Aside"--clause 52.220-2--which gave notice that the procurement was restricted to LSA concerns and specifically cautioned that bidders who do not agree to perform as LSA concerns will be considered nonresponsive. As our decision states, we have held that the promise to incur the requisite proportion of costs in LSA's is a material term in an LSA restricted competition; consequently, a bidder's status must be determined at bid opening. See Salon Tropical Restaurants, B-211239, Apr. 6, 1983, 83-1 C.P.D. ¶ 371.

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2

Since Air's arguments are essentially a reiteration of contentions which it regards as our not having satisfactorily answered, its request for reconsideration is denied.

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 General Counsel